

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

SARAH WHYNAUGHT,

Plaintiff

v.

TOWN OF RUMFORD,
TOWN OF MEXICO,
DOUGLAS E. MAIFELD,
TIMOTHY CHAPMAN, AND
COLIN CAMPBELL,

Defendants

Civil No. 96-264-P-C

GENE CARTER, District Judge

ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

Plaintiff, Sara Whynaught, has brought an action against Defendants Douglas E. Maifeld, Timothy Chapman, Colin Campbell, and the Towns of Rumford and Mexico, alleging claims for battery (Count I), false imprisonment (Count II), malicious prosecution (Count III), and a violation of her Fourth and Fifth Amendment rights under 42 U.S.C. § 1983 (Count IV). Plaintiff seeks compensatory and punitive damages together with interest and costs. Now before the Court for decision are Defendants' Motions for Summary Judgment (Docket Nos. 12 and 14). The Court will, for the reasons stated below, grant in part and deny in part each of the motions.

I. FACTS

The facts, viewed in the light most favorable to the

Plaintiff, are as follows: on October 15,¹ 1994, at approximately 11:00 or 11:30 p.m., Plaintiff Sarah Whynaught went to the Candlestick Lounge in Rumford with her friend Amy Frost. Whynaught Dep. at 65, 34. Whynaught and Frost sat down at a table with a group of other people, including John Ellis, who was Plaintiff's former boyfriend at the time.² Id. at 66, 31-32. At a certain point, John DiConzo, the owner of the establishment, approached the table, shook his finger at Ellis, and said something to the effect of, "You know my rules." Id. at 75-77; DiConzo Dep. at 9. According to DiConzo, he was asking Ellis to leave. DiConzo Dep. at 16.

Shortly thereafter, while Whynaught was standing at the bar exchanging words with DiConzo, a group of police officers entered the Candlestick Lounge. Whynaught Dep. at 85-96. DiConzo stopped talking to Whynaught and went over to the officers. Id. at 96. After that, a fight broke out between the police officers and John Ellis, and possibly other individuals. Id. at 99. During the fracas, Amy Frost was knocked to the floor. Id. at 115. While attempting to assist Frost in standing up, Whynaught was handcuffed and taken out of the Candlestick Lounge. Id. at 131, 141. Whynaught's eyes were burning from a spray used by the

¹The Court notes that this date is alternately cited in the pleadings, depositions, and exhibits as October 14, October 15, and October 16.

²Shortly thereafter, Whynaught went up to the bar to order something to drink. Whynaught Dep. at 71. The record appears to reflect that she consumed a total of approximately 2-3 alcoholic beverages that evening. Id. at 58-59, 93-99.

officers. Id. at 133. Whynaught was taken to the Rumford Police Station and detained in a cell for two hours. Id. at 151, 157. She was charged with obstructing government administration. Id. at 162. Whynaught was subsequently tried in Oxford Superior Court and found not guilty of the charge. Id. at 166-67; see also Oxford Superior Court Docket Sheet, attached to Plaintiff's Objection to Defendants' Motion for Summary Judgment (hereafter "Plaintiff's Objection") (Docket No. 21) as Appendix A.

II. DISCUSSION

As an initial matter, Plaintiff concedes that the Fourth Amendment claim under § 1983 against Officer Chapman³ and all of the claims for punitive damages against the Towns of Rumford and Mexico should be dismissed. See Plaintiff's Objection at 15. Hence, the Court will dismiss each of those claims, and the following analysis will apply only to the remaining claims.

³Plaintiff concedes that Chapman was not involved in her handcuffing, arrest, or prosecution (see Plaintiff's Objection to Defendants' Motion for Summary Judgment (Docket No. 21) at 10, which states that "Chapman was not involved in either the arrest, use of force, or trial"). Plaintiff has already conceded that the Fourth Amendment claim under § 1983 should be dismissed as against Chapman. In addition, the Court concludes that insofar as Plaintiff alleges no physical contact between Chapman and Plaintiff and no attempt by Chapman to restrain Plaintiff's freedom of movement, the Court will also dismiss Counts I and II as against Officer Timothy Chapman. With respect to Count III, see section B(1), infra.

A. Federal Law Claims

1. Officers Maifeld, Chapman, and Campbell

Plaintiff asserts that Officers Maifeld, Chapman, and Campbell, acting under color of state law, deprived Plaintiff of her constitutional rights under the Fourth and Fifth⁴ Amendments, in violation of 42 U.S.C. § 1983. Defendants move for summary judgment on these claims, asserting that the arrest was based on probable cause, the use of force was reasonable, and the officers are entitled to qualified immunity.

Summary judgment is appropriate only when there are no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

⁴Defendants have argued that, to the extent that Plaintiff's § 1983 claim asserts a violation of Plaintiff's Fifth Amendment rights, the claim fails as a matter of law, since the Fifth Amendment applies only to federal actions. Motion for Summary Judgment (Docket No. 14) at 10, and Reply Memorandum (Docket No. 24) at 5. Plaintiff concedes that she pleaded the claim improperly and that she intended to assert a violation of her rights under the Due Process Clause of the Fourteenth, not the Fifth, Amendment. See Plaintiff's Objection to Defendants Motions for Summary Judgment (Docket No. 21) at 8. However, Plaintiff asserts that the Complaint satisfies the notice pleading requirements of Rule 8(a). Id.

Even if the Court were to overlook Plaintiff's pleading error, and to construe the Fifth Amendment claim as a Fourteenth Amendment claim, the claim still fails. The Supreme Court has appeared to indicate that malicious prosecution is not actionable as a violation of the Fourteenth Amendment under § 1983. Albright v. Oliver, 127 L. Ed. 2d 114 (1994) (plurality opinion); Roche v. John Hancock Mut. Life Ins. Co., 81 F.3d 249, 256 (1st Cir. 1996). The Court concludes, therefore, that the Fifth Amendment claim under § 1983 should be dismissed as against Officers Maifeld, Chapman, and Campbell. It should be noted, however, that the Court in Albright left open the question of whether malicious prosecution is actionable as a violation of the Fourth Amendment under § 1983. 127 L. Ed. 2d at 124.

After a review of the pleadings and depositions, and viewing the evidence in the light most favorable to the nonmoving party, see McCarthy v. Northwest Airlines, Inc., 56 F.3d 313, 315 (1st Cir. 1995), the Court concludes that there are genuine issues of material fact pertaining to each of the four counts, including, inter alia, the nature and extent of the interaction between Plaintiff and the police officers in the Candlestick Lounge and the amount of force used to effect Plaintiff's arrest. The record reflects a vast disparity between the Plaintiff's account and the officers' accounts of the events which gave rise to and which followed Plaintiff's arrest. These issues of fact require resolution by a factfinder and preclude the Court from discerning at this stage whether probable cause existed, whether the amount of force used was excessive, and whether it would have been reasonable for an officer in that position to believe that he or she was not violating Plaintiff's rights. Hence, the Court will not grant summary judgment in favor of the individual police officers, Defendants Douglas E. Maifeld and Colin Campbell, on Count IV to the extent that it alleges a Fourth Amendment claim under § 1983. To the extent that Count IV alleges a Fifth Amendment claim under § 1983, the Court will dismiss the claims as against Officers Maifeld, Chapman, and Campbell. See note 4, supra.

2. Towns of Rumford and Mexico

The Court will grant summary judgment in favor of Defendants

Town of Rumford and Town of Mexico on Count IV. While Plaintiff's Complaint names the Towns as Defendants, the Complaint fails to allege a custom, policy, or practice of deliberate indifference by the Towns in the training or supervision of police officers, or a causal link between such conduct and the alleged violation of Plaintiff's constitutional rights. See Complaint (Docket No. 1). In a response brief, however, Plaintiff does advance two theories under which she asserts that the Towns of Rumford and Mexico are liable under § 1983. See Plaintiff's Objection at 15. Plaintiff alleges that the Towns showed deliberate indifference towards training and supervising officers in the use of nondeadly force, and towards the use of force in this particular case insofar as the departments did not investigate the incident. The Supreme Court of the United States recently explained,

a plaintiff seeking to impose liability on a municipality under § 1983 [is required] to identify a municipal 'policy' or 'custom' that caused the plaintiff's injury. . . . [and] to demonstrate that, through its deliberate conduct, the municipality was the 'moving force' behind the injury alleged.

Bd. of the County Comm'rs of Bryan County, Okla. v. Brown, 1997 WL 201995 (U.S.) (1997) at 5 (citing Monnell v. New York City Dept. of Soc. Services, 436 U.S. 658, 694 (1978), and Pembaur v. Cincinnati, 475 U.S. 469, 480-81 (1986)). On this record, the Court concludes that Plaintiff has failed to raise a genuine issue of fact regarding causation; that is, Plaintiff has failed

to allege, or to produce evidence from which a factfinder could conclude, that the conduct of the Towns of Rumford and Mexico, as reflected by any alleged lack of adequate training or any alleged lack of a follow-up investigation, was a "moving force" behind the alleged injury itself. The Court concludes, therefore, that Defendants Town of Rumford and Town of Mexico are entitled to judgment as a matter of law on Count IV.

B. State Law Claims (Counts I-III)

1. Officers Maifeld, Chapman, and Campbell

Defendants Maifeld, Chapman⁵ and Campbell move for summary judgment on the state law claims for battery, false imprisonment and malicious prosecution on the grounds that Defendants are entitled to immunity under sections 8111(1)(C) and 8111(1)(E) of the Maine Tort Claims Act (MTCA), which provide that:

§ 8111 Personal immunity for employees;
 procedure

1. Immunity Notwithstanding any liability that may have existed at common law, employees of governmental entities shall be absolutely immune from personal civil liability for the following:

.

C. Performing or failing to perform any discretionary function or duty, whether

⁵As previously noted, the Court will dismiss Counts I, II, and IV as against Timothy Chapman. See notes 3 & 4, supra. For the purposes of this analysis under state law, then, the Court considers Chapman's motion only as it applies to Count III.

or not the discretion is abused; and whether
or not any statute, charter, ordinance,
order, resolution, rule or resolve under
which the discretionary function or duty is
performed is valid;

. . . .

E. Any intentional act or omission
within the course and scope of employment;
provided that such immunity shall not exist
in any case in which an employee's actions
are found to have been in bad faith.

See 14 M.R.S.A. §§ 8111(1)(C) & (1)(E) (1964 & Supp. 1996).

The phrase "discretionary function" in section 8111(1)(C) has been interpreted to mean a duty with respect to which an officer is "'required to use [his or her] judgment while acting in furtherance of a departmental policy [or a legislatively imposed duty].'" Hegarty v. Somerset County, 848 F. Supp. 257, 269 (D. Me. 1994) (quoting Moore v. City of Lewiston, 596 A.2d 612, 616 (Me. 1991)). A warrantless arrest is a discretionary function. McPherson v. Auger, 842 F. Supp. 25, 29 (D. Me. 1994) (citing Leach v. Betters, 599 A.2d 424 (Me. 1991)). It is undisputed that the officers were on duty on the evening in question, that they were acting pursuant to a phone call made by the owner of the Candlestick Lounge and that Plaintiff's arrest took place in the midst of a considerable fracas which erupted shortly after the police officers arrived. Both the decisions to arrest the Plaintiff and to charge her with commission of a crime were acts which required the officers' judgment and were done in furtherance of the police department's policies. Based upon this

record, the Court concludes that when the officers arrested and charged Plaintiff, they were carrying out duties that may properly be characterized as discretionary functions.

In Hegarty, the Court noted that "[d]iscretionary immunity is unavailable . . . when the officer's conduct was so egregious that it 'clearly exceeded, as a matter of law, the scope of any discretion he could have possessed in his official capacity as a police officer.'" Hegarty, 848 F. Supp. 257, 269 (quoting Polley v. Atwell, 581 A.2d 410, 414 (Me. 1990)). On these facts, it cannot be said that the officers clearly exceeded, as a matter of law, the scope of any discretion they could have possessed. Hence, the Court is satisfied that they are entitled to immunity under section 8111(1)(C) of the MTCA, and the Court will, therefore, grant summary judgment in the officers' favor on the state law claims for battery, false imprisonment and malicious prosecution.

2. Towns of Rumford and Mexico

Under section 8103 of the MTCA, a government entity is immune from suit on tort claims seeking damages, subject to a few narrow exceptions. See 14 M.R.S.A. § 8103. However, "a municipality will waive immunity in those substantive areas in which it has procured liability insurance." Maquire v. Municipality of Old Orchard Beach, 783 F. Supp. 1475, 1489 (D. Me. 1992); see 14 M.R.S.A. § 8116. A municipality waives immunity only to the limits of its insurance coverage.

14 M.R.S.A. § 8116. It is the municipality's burden to establish that it is not covered for a particular claim. McLain v. Milligan, 847 F. Supp. 970, 980 (D. Me. 1994). The record reflects that the Towns of Rumford and Mexico held liability insurance which covered their police departments and officers for claims of personal injury, including claims of battery, false imprisonment, and malicious prosecution. See Defendant Town of Rumford's Response to Plaintiff's Second Request for Production of Documents, attached to Plaintiff's Objection (Docket No. 21); see also Answers of Defendant Town of Mexico to Second Request for Production of Documents, attached to Plaintiff's Objection (Docket No. 21). In producing copies of these insurance policies, the Towns of Rumford and Mexico made no attempt to deny that their police departments were covered by the insurance policies they produced. Defendant Town of Rumford's Response to Plaintiff's Second Request for Production of Documents ¶ 1, attached to Plaintiff's Objection; Answers of Defendant Town of Mexico to Second Request for Production of Documents ¶ 1, attached to Plaintiff's Objection. Hence, the Court concludes, as a matter of law, that the Towns of Rumford and Mexico have waived their immunity to the extent of their insurance coverage. The Court will not, therefore, grant summary judgment in favor of the Towns of Rumford and Mexico as to the state tort claims.

III. CONCLUSION

Accordingly, it is ORDERED that the Motions for Summary

Judgment be, and they are hereby, GRANTED as to Defendants Douglas E. Maifeld and Colin Campbell on Counts I, II, and III, and DENIED on Count IV to the extent that it asserts a claim under the Fourth Amendment. To the extent that Count IV alleges a claim under the Fifth Amendment, it is hereby DISMISSED. It is further ORDERED that Counts I, II, and IV be, and they are hereby, DISMISSED as to Defendant Timothy Chapman only, and that Defendant Chapman's Motion for Summary Judgment be GRANTED as to Count III. Additionally, it is ORDERED that the Motions be, and they are hereby, GRANTED as to Defendants Town of Rumford and Town of Mexico on Count IV only, and DENIED as to Defendants Town of Rumford and Town of Mexico on Counts I, II, and III, and that all of the claims for punitive damages against the Towns of Rumford and Mexico be, and they are hereby, DISMISSED.

In sum, the Court concludes that the claims remaining for trial are the Fourth Amendment claim under section 1983 against Officers Maifeld and Campbell and the claims for battery, false imprisonment, and malicious prosecution against the Towns of Rumford and Mexico.

GENE CARTER
District Judge

Dated at Portland, Maine this 13th day of May, 1997.